

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

BARBARA MCGREW, LYNN	*	Civil Action No. 5:18 cv 58
MARTIN, MICHAEL LONG,	*	
and STEVEN GOODKIND,	*	
Plaintiffs	*	
	*	
v.	*	
	*	
CITY OF BURLINGTON,	*	
VERMONT, DEVONWOOD	*	
INVESTORS, LLC, and	*	
BTC MALL ASSOCIATES, LLC,	*	
Defendants	*	

**MOTION FOR LEAVE TO FILE A REBUTTAL TO  
BTC MALL’S AND DEVONWOOD’S REPLY MEMORANDUM  
IN FURTHER SUPPORT OF THEIR MOTION TO COMPEL**

Plaintiffs move for leave to file a brief rebuttal to Devonwood Investors and BTC Mall Associates’ *Reply Memorandum* (Document 66) as set forth in their attached *Proposed Rebuttal Memorandum in Opposition to Motion to Compel*.

**MEMORANDUM IN SUPPORT OF MOTION**

Devonwood Investors and BTC Mall Associates raised the argument for the first time that their *Mediation Agreement* with the plaintiffs “extends only to the communications made during the mediation, not all communications ‘relating in any way to’ the settlement agreement and related documents, as requested in Request to Produce #4.” Due process requires that plaintiffs be given an opportunity to respond. *See Phoenix Aktiengesellschaft v. Ecoplas, Inc.*, 391 F.3d 433, 438 n.4 (2<sup>nd</sup> Cir. 2004); *Pierro v. Comm’r of Social Security*, (D.Vt. 2013, WL 5406237 at 1 n.1)

Dated at Burlington, Vermont this 12th day of December, 2018.

/s/John L. Franco, Jr.  
John L. Franco, Jr.  
Attorney for Plaintiffs